

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
March 16, 2004 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Michael D. Redifer, Board member, presided. No other Board members were present.

Jennifer Kazzie appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case
Lic = Licensing Application
RF = Recovery Fund Claim
Trades = Tradesmen Application

C = Complainant/Claimant
A = Applicant
R = Respondent/Regulant
W = Witness
Atty = Attorney

Participants

- | | |
|---|--|
| 1. Colbert S. Construction Company
File Number 2003-02258 (Disc) | None |
| 2. Ricky Walton
t/a Walton's Building Contractor
File Number 2003-03255 (Disc) | David Lesniak - C
Patricia Lesniak - C |
| 3. Jackson Construction Inc.
File Number 2002-02345 (Disc) | James Jackson – R
Douglas Butler - C
Inv. David Dorner |
| 4. David and Karen Mirkovich and
Nova Industries Inc., t/a S & S Kitchen & Bath
File Number 2003-00595 (RF) | None |
| 5. Deckorative Creations LLC
File Number 2003-03277 (Disc) | None |
| 6. Michael L. Graham Sr. | |

t/a M L Graham
File Number 2003-01485 (Disc)
No IFF held.

DRAFT

The meeting adjourned at 1:30 p.m.

BOARD FOR CONTRACTORS

Mark D. Kinser, Chairman

Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: COLBERT S. CONSTRUCTION COMPANY
LICENSE NUMBER: 2705051997**

FILE NUMBER: 2003-02258

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on March 16, 2004 at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Colbert S. Construction Company on January 21, 2004. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Michael Redifer, presiding Board Member. No one from Colbert S. Construction Company appeared at the IFF in person or by counsel.

Background

On February 20, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Bernice M. Weber (Weber) regarding a contract entered into with Colbert's Construction Company (Colbert).

On April 6, 2002, Weber entered into a contract with Colbert, in the amount of \$2,201.00, to pave an aggregate driveway and concrete area in front of the tool shed at 14622 Darbydale Avenue, Dale City, Virginia.

Summation of Facts

1. The contract used by Colbert failed to contain the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22-260(B)(9), subsections (a) when work is to begin and the estimated completion date, (f) disclosure of the cancellation rights of the parties, and (h) contractor's license expiration date and specialty service. Colbert failed to make use of a legible contract that contains all provisions specified in the regulation.
2. On November 13, 2002, in the Prince William General District Court, Keith Rendell Colbert pleaded guilty and was convicted of trespass, a Class 1 misdemeanor, in violation of Section 18.2-119 of the Code of Virginia.
3. On February 21, 2003, a review of the licensing records of the Board for Contractors revealed Colbert's Construction Company was issued Class B Contractor's license number 2705051997 on June 30, 2000. The records further revealed Keith R. Colbert was the Responsible Management of Colbert.
4. In a letter dated April 11, 2003, Jonathan B. Kazem (Kazem), attorney for Colbert's Construction Company and Keith R. Colbert, admitted that Colbert's Construction Company failed to report Keith Colbert's Class 1 misdemeanor conviction to the Board for Contractors.
5. Colbert's Construction Company failed to inform the board in writing, within 30 days, that Keith Colbert, Responsible Management of Colbert, pleaded guilty to a Class 1 misdemeanor.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(9) (Effective September 1, 2001)

Colbert's failure to make use of a written contract which contains the minimum provisions specified by the Board is a violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend that a monetary penalty of \$350.00 be imposed. In addition, I recommend a member of responsible management successfully complete the Board's Basic Contracting Licensing Class (remedial education) within six months of the entry of the order.

Count 2: 18 VAC 50-22-260(B)(22) (Effective September 1, 2001)

Keith R. Colbert's action of having been convicted, after initial licensure, regardless of adjudication, in any jurisdiction, of a misdemeanor is a violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(22). Therefore, I recommend that a monetary penalty of \$350.00 be imposed. In addition, I recommend a member of responsible management successfully complete the Board's Basic Contracting Licensing Class (remedial education) within six months of the entry of the order.

Count 3: 18 VAC 50-22-260(B)(23) (Effective September 1, 2001)

Colbert's failure to inform the board, in writing, within 30 days, that a member of responsible management has pleaded guilty to a Class 1 misdemeanor is a violation of the Board's 2001 Regulation 18 VAC 50-22-260. Therefore, I recommend that a monetary penalty of \$350.00 be imposed. In addition, I recommend a member of responsible management successfully complete the Board's Basic Contracting Licensing Class (remedial education) within six months of the entry of the order.

By:

Michael Redifer
Presiding IFF Board Member
Board for Contractors
Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705051997 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: JACKSON CONSTRUCTION, INC.
LICENSE NUMBER 2701 019988**

FILE NUMBER: 2002-02345

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on March 16, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Jackson Construction, Inc. (Jackson) on October 31, 2003, and by reschedule letter on January 21, 2004. The following individuals participated at the conference: James R. Jackson, Jr., on behalf of Jackson Construction, Inc., Respondent; Douglas Butler, Complainant; David Dorner, Investigator; Jennifer Kazzie, Staff Member; and Michael D. Redifer, presiding Board Member.

Background

On or about January 15, 2002, Douglas Butler (Butler) submitted a written complaint to the Enforcement Division of the Department of Professional and Occupational Regulation regarding a contract entered into with Jackson Construction Inc. (Jackson).

On or about January 26, 1998, Butler received a written agreement from Jackson, in the amount of \$88,600.00, to remodel a kitchen, utility room, and family room, to convert the garage into a den, and to add a master bedroom suite over the existing garage at 325

Bartell Drive, Chesapeake, Virginia. On or about May 7, 1998, Butler and Jackson accepted the contract and signed the agreement.

On or about February 25, 1998, Butler paid Jackson \$250.00 by check. On or about May 7, 1998, Butler paid Jackson \$29,500.00 by check.

On or about September 25, 1998, Jackson obtained building permit number B9808328 for work to be performed at 325 Bartell Drive, Chesapeake, Virginia. After obtaining the building permit, Jackson commenced work on the project.

On or about February 26, 1999, Butler paid Jackson \$8,000.00 by check. On or about March 4, 1999, Butler paid Jackson \$21,500.00 by check.

On or about July 9, 1999, Butler received a written change order from Jackson, in the amount of \$3,627.10, for modifications to the materials and costs of the original contract.

On or about October 25, 1999, Butler paid Jackson \$4,500.00 by check. As of October 25, 1999, Butler had paid Jackson a total of \$63,750.00 toward the contract price.

Summation of Facts

1. Jackson failed to obtain Butler's signature on the written change order prior to making modifications to the materials and costs of the original contract.
2. In October 1999, Jackson left the project. Butler called Jackson regarding the status of the work. Jackson told Butler that he was having financial problems.
3. As of January 2000, Jackson failed to return to complete the following work: install heating and ventilation in the garage that was converted to a den; install heating and ventilation in the master bedroom; install carpet in the garage which was converted to a den; install flashing around windows; exterior wall system providing no protection for interior finishes of house; the top solder course of brick is incomplete and the lintels over what used to be the garage door and the new bay window have not been installed; exterior electrical lines and meter; hardwood floor has not received the final finish; remove wall between existing family room and living room; install cathedral ceiling with two skylights at rear portion of ceiling; paint new interior walls with sand finish.
4. In January 2000, Butler made several attempts to contact Jackson by telephone. Jackson failed to respond to Butler.
5. On or about February 8, 2000, Jackson ordered mortar from Batchelder & Collins Incorporated. On or about February 8, 2000, Jackson returned to the subject property to deliver mortar. On or about February 11, 2000, Jackson repaired some damaged plywood. On or about February 18, 2000, Jackson sent a brick mason to the subject property to complete the brick work, but the brick mason was asked to leave.

6. In a letter addressed to Roy, Laine, Larsen, Romm & Lascara, P.C., registered agent for Jackson, dated February 18, 2000, Albert Hartley (Hartley), attorney representing Butler, notified Jackson that Butler was terminating the contract with Jackson because of "undue delay, incomplete and unsatisfactory work, and other reasons." On or about February 21, 2000, Jackson received the letter from Hartley.

7. On or about December 5, 2000, at the request of Butler, Steven S. Welton (Welton), P.E., Welton Structural Design, P.C., inspected the current conditions of the construction performed by Jackson at 325 Bartell Drive, Chesapeake, Virginia. In a report dated December 11, 2000, Welton noted the following:

- a. Unfinished exterior wall system providing no protection for interior finishes of house;
- b. Incomplete and unfinished enclosure of the addition with a required moisture retarder to separate and protect the inside of the house from the exterior;
- c. Incomplete flashing and construction around windows and doors permitting water easy access into the exterior walls;
- d. Placement of electrical lines and meter directly onto the ground along the side of the addition that has been left in an unfinished condition;
- e. Incomplete brickwork throughout the exterior of the addition;
- f. And miscellaneous other items described where the work is incomplete and unfinished.
- g. The triple window and the surrounding walls of the low roof addition have been constructed directly onto the original driveway concrete slab. Therefore, these walls are not supported by a foundation as required. This makes them vulnerable to the expansion and contraction due to freezing and moisture changes and differential movement where it intersects the existing wall because it does not have a common foundation with the existing wall.
- h. Portions of the moisture retarder have been extended above the brick and draped over the top. This means that any water running down the side of the 2nd floor addition is directed behind the moisture retarder and into the finished interior of the addition.
- i. The new brickwork has been constructed tight to the existing wood overhang. This condition does not permit the brick to expand and contract under thermal and moisture changes, and it will increase the likelihood of long-term damage to the exposed exterior finishes.
- j. In the breakfast area and kitchen, the window flashing was left behind the moisture retarder, or is missing altogether. In either case, moisture from the window is not directed outward as required, but instead back into the wall and onto the interior finishes.
- k. Portions of the remodeled kitchen walls were also observed to have a very rough texture. The original wallpaper was only partially removed prior to the

finish painting of the remodeled kitchen; thereby, producing the rough wall finish observed.

- m. Welton further noted that the unfinished condition of the exterior of the addition has provided a path for moisture to enter the walls and damage the interior finishes of the house.
8. On or about August 23, 2001, at the request of Jackson, Gregory Gerling (Gerling), P.E., McPherson & Associates, P.C., inspected the current conditions of the construction performed by Jackson at 325 Bartell Drive, Chesapeake, Virginia. In a report dated March 6, 2002, Gerling noted the work appeared to be approximately 80 to 85% complete and the interior finishes for the new second floor were approximately 90% complete. Gerling further noted Jackson did not complete the brick work, installation of the vinyl siding, and other minor interior items, including finishing the hardwood floor and repairing holes in the gypsum sheathing, along with the following observations:
- a. The walls of the bay window on the front of the house were built directly on the driveway slab. This condition could potentially allow water to penetrate under the brick to the wood studs and gypsum sheathing beyond.
 - b. The exterior wall of the bay window is only supporting its self-weight and a one-foot wide portion of the roof over the window. All of the wall, floor and roof loads of the new addition are being carried by a header that spans between the original garage door jambs. Therefore, the load on the driveway slab is almost negligible.
 - c. The untreated studs in the crawl space area of the new utility room are bearing directly on the masonry with no flashing. This makes the stud susceptible to moisture and termite damage.
9. On or about November 8, 2002, Jackson admitted to Assistant Director David Dornier, the Board's agent that the total monies spent toward the Butler project was approximately \$63,209.34.
10. During the IFF, Butler testified that a recent debtor interrogatory revealed Jackson Construction, Inc. was insolvent.
11. Jackson failed to return funds received for work not performed or performed in part.
12. On or about January 29, 1999, Jackson received an invoice from H & P Electrical (H & P), in the amount of \$1,682.50, for electrical work performed at the subject property. On or about March 2, 1999, Jackson paid H & P \$1,775.50 by check.
13. On or about June 10, 1999, Jackson received an invoice from Baker's Interior Trim (Baker's), in the amount of \$650.00, for work performed at the subject property.
14. On or about October 29, 1999, Jackson received an invoice from H & P, in the amount of \$1,182.50, for electrical work performed at the subject property.

15. On or about July 10, 2000, Jackson received an invoice from Kitrell's Floor Service (Kitrell's), in the amount of \$1,470.00, for labor and materials for installation of oak flooring at the subject property.

16. On or about November 8, 2002, Jackson told the Board's agent that Jackson has not paid Baker's, Kitrell's, and H & P in full for the work performed at the subject property.

17. Jackson hired Brian Thomas (Thomas), t/a Big Better Best Home Improvement, to perform framing work at the subject property. On or about November 30, 1998, Thomas delivered the framing materials and removed the roof over the garage. On or about February 3, 1999, Jackson received an invoice from Thomas, in the amount of \$1,500.00, for removal of the roof rafters over the garage and installation of floor joists at the subject property. On or about March 2, 1999, Jackson paid Thomas \$1,500.00 by check.

18. On or about March 26, 1999, Jackson received an invoice from Gary Druyos (Druyos), t/a Superior Plastering, in the amount of \$1,100.00, for plastering work performed at the subject property. On or about March 26, 1999, Jackson paid Druyos \$1,100.00 by check.

19. Jackson hired Tuyen Le (Le) to perform odd jobs and set the kitchen cabinets at the subject property. On or about March 26, 1999, Jackson received an invoice from Le, in the amount of \$2,041.00, for miscellaneous work performed at the subject property. On or about May 30, 1999, Jackson received an invoice from Le, in the amount of \$1,479.94, for miscellaneous work performed at the subject property.

20. On or about March 26, 1999, Jackson paid Le \$500.00 by check. On or about April 5, 1999, Jackson paid Le \$1,000.00 by check. On or about April 12, 1999, Jackson paid Le \$541.00 by check. On or about May 25, 1999, Jackson paid Le \$68.51 and \$1,411.43 by check.

21. On or about July 6, 1999, Jackson received an invoice from Painters Perfection, in the amount of \$2,200.00, for interior and exterior work performed at the subject property. On or about July 16, 1999, Jackson paid Painters Perfection \$2,200.00 by check.

22. On or about July 21, 1999, Jackson received an invoice from Liberty Construction Company (Liberty), in the amount of \$1,400.00, for brick work performed at the subject property. On or about November 9, 1999, Jackson paid Liberty \$700.00 by check.

23. On or about November 8, 2002, Jackson told the Board's agent "I would not have any idea if a sub I hired was licensed or not."

24. On or about January 15, 2003, a review of the licensing records of the Board for Contractors revealed Brian Thomas, t/a Big Better Best Home Improvement; Gary Druyos, t/a Superior Plastering; Tuyen Le; Painters Perfection; and Liberty Construction Inc. were not licensed contractors.

Conclusion and Recommendation

Count 1: § 5.7.B.6 (Effective March 31, 1995)

Jackson's failure to obtain Butler's signature on the written change order prior to making modifications to the materials and costs of the original contract is a violation of Board Regulation § 5.7.B.6. Therefore, I recommend that a monetary penalty of \$350.00 be imposed. In addition, I recommend a member of responsible management successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 2: § 5.7.B.12 (Abandonment) (Effective March 31, 1995)

Jackson's failure to complete work contracted for is a violation of Board Regulation § 5.7.B.12. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 3: § 5.7.B.12 (Effective March 31, 1995)

Jackson's failure to return funds received for work not performed or performed only in part is a violation of Board Regulation § 5.7.B.12. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 4: § 5.7.B.12 (Effective March 31, 1995)

Jackson's misapplication of funds paid, for which work is either not performed or performed only in part, is a violation of Board Regulation § 5.7.B.12. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 5: § 5.7.B.5 (Effective March 31, 1995)

Jackson's gross negligence in the practice of contracting based upon reports made by Steven S. Welton, P.E., dated December 11, 2000, and Gregory Gerling, P.E. dated March 6, 2002, is a violation of Board Regulation § 5.7.B.5. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 6: § 5.7.B.14 (Effective March 31, 1995)

Jackson's actions of assisting an unlicensed/uncertified contractor to violate any provision of Chapter 1 or Chapter 11 of Title 54.1 of the Code of Virginia, is a violation of Board Regulation § 5.7.B.14. Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed. In addition, I recommend a member of responsible management successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

By:

Michael D. Redifer
Presiding IFF Board Member
Board for Contractors

Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2701 019988 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

IN RE: IN THE MATTER OF THE VIRGINIA CONTRACTOR TRANSACTION

**RECOVERY ACT CLAIM OF DAVID MIRKOVICH & KAREN MIRKOVICH
(CLAIMANTS) AND NOVA INDUSTRIES, INC. T/A S&S KITCHEN AND BATH
(REGULANT)**

LICENSE NUMBER: 2705 053994

FILE NUMBER: 2003-00595

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on March 16, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to David and Karen Mirkovich c/o Thomas Breeden, Esquire, and Nova Industries, Inc., t/a S & S Kitchen and Bath, on February 2, 2004. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Michael D. Redifer, presiding Board Member. Neither the Mirkovich's, nor anyone on their behalf, appeared at the IFF. In addition, no one from Nova Industries, Inc. appeared at the IFF, in person or by counsel.

Background

On **October 2, 2001**, in the General District Court of Prince William County, David Mirkovich and Karen Mirkovich, obtained a **Judgment** against Nova Industries, Inc. **in the amount of \$15,000.00, plus interest and \$49.00 costs and \$5,000.00 attorney fees.**

The **claim** in the amount of **\$10,000.00** was received by the Department of Professional and Occupational Regulation on **August 26, 2002.**

Summation of Facts

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Order recites "improper and dishonest conduct" as the basis of the award.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants **did** contract with the regulant.

The Board issued Class A License Number 2705053994 to Nova Industries, Inc. t/a S&S Kitchen and Bath, on **April 4, 2000**. The license was permanently revoked on **January 25, 2002**. The claimant entered into a written contract

with S&S Kitchen and Bath on **August 12, 2000** for the installation of three new bathrooms at the claimants' residence.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did receive pleadings and/or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **October 2, 2001**. The claim was received on **August 26, 2002**.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with S&S Kitchen and Bath for the installation of three new bathrooms at the claimants' residence.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

The question regarding debtor's interrogatories was not answered on the claim form. A Proof of Service form pertaining to debtor's interrogatories has been included in the file. Service was made by posting the Summons to Answer Interrogatories on the front door.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Order recites "improper and dishonest conduct" as the basis of the award.

10. **Code of Virginia Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy. In response to this question, the claimant responded, "No."

11. **Code of Virginia Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$10,000.00. The Order recites improper and dishonest conduct as the basis of the award.

By: _____

Michael D. Redifer
Presiding IFF Board Member
Contractor's Recovery Fund

Date: _____

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: DECKORATIVE CREATIONS LLC
LICENSE NUMBER: 2705 069932**

FILE NUMBER: 2003-03277

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on March 16, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Deckorative Creations, LLC, on December 17, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Michael Redifer, presiding Board Member. No one from Deckorative Creations, LLC appeared at the IFF, in person or by counsel.

Background

On May 28, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Katherine Perdue (Perdue) regarding a contract entered into with Deckorative Creations LLC (Deckorative).

On September 27, 2002, Perdue entered into a contract with Deckorative, in the amount of \$8,350.00, to install a retaining wall, build a storage closet, and replace a walkway and deck at 6935 Empire Lane, Roanoke, Virginia.

On October 4, 2002, Deckorative commenced work. By November 1, 2002, Deckorative had only completed half of the platform floor of the front deck.

Summation of Facts

1. On May 28, 2003, a review of the licensing records of the Board for Contractors revealed Deckorative was issued Class C Contractor's license number 2705069932 on June 28, 2002.
2. Deckorative failed to obtain a Class B license in order to perform work in excess of the \$7,500.00 limit of a Class C license.
3. The contract used by Deckorative in the transaction failed to contain subsections: (a) when the work is to begin and the estimated completion date, (e) statement of assurance regarding local requirements for building permits, inspections and zoning, and (h) contractor's address, license number, expiration date, class of license/certificate, and classification or specialty services.
4. On November 26, 2002, at the request of Perdue, Randy Wimmer (Wimmer), Building Inspector for Roanoke County, performed an inspection of the work performed by Deckorative at the subject property. Wimmer noted the following:
 - a. Guardrail system on deck where it is 30" or more inches above ground (36" high);
 - b. Handrail-guardrail combination on steps needs to be 34"-38" measured from nose of tread – no more than 4' between pickets;
 - c. Add blocking under treads on steps due to stringers to (sic) far apart;
 - d. "L" brackets at top of stringers; and
 - e. Replace post on existing deck under steps.
5. On November 7, 2002, Deckorative told Perdue that work could not continue until Deckorative was paid the next half of the progress payment in order to order the materials for the rock wall. Perdue told Deckorative that she would pay for the next order of supplies once delivered to the subject property and pay the rest of the money once the deck was completed.
6. On November 8, 2002, Perdue attempted to contact Deckorative and left a message. After no response, Perdue sent Deckorative an email regarding the progress of the project.

7. Deckorative returned to complete the floor and two sets of steps on the front deck. Deckorative requested payment, but Perdue refused to pay until Deckorative fixed the work performed by Deckorative and completed the work contracted for. On November 22, 2002, Deckorative left the project without completing the work contracted for, including the railings, closet, and siding on the deck. Deckorative contacted Perdue and left a message that Deckorative would not do anymore work until Perdue paid Deckorative the remaining money owed on the contract. As of May 21, 2003, Deckorative failed to complete the work contracted for.

DRAFT

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(27) (Effective September 1, 2001)

Deckorative's failure to obtain a Class B license in order to perform work in excess of the \$7,500.00 limit of a Class C license is a violation of Board Regulation 18 VAC 50-22-260(B)(27). Therefore, I recommend that a monetary penalty of \$500.00 be imposed for a violation of this regulation. In addition, I recommend a member of responsible management successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 2: 18 VAC 50-22-260(B)(9) (Effective September 1, 2001)

Deckorative's failure to make use of a written contract which contains the minimum provisions specified by the Board's Regulations is a violation of Board Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend that a monetary penalty of \$350.00 be imposed for a violation of this regulation. In addition, I recommend a member of responsible management successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 3: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

Deckorative's action of performing work which contained deficiencies as outlined in the inspection report by Randy Wimmer, Building Inspector for Roanoke County, dated November 26, 2002, is a violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend that a monetary penalty of \$500.00 be imposed for a violation of this regulation.

Count 4: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

Deckorative's failure to complete the work contracted for and/or to comply with the terms of the contract is a violation of Board Regulation 18 VAC 50-22-260(B)(15). Therefore, I recommend that a monetary penalty of \$1,500.00 and license revocation be imposed for a violation of this regulation.

By:

Michael D. Redifer
Presiding IFF Board Member
Board for Contractors
Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 069932 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.